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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

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MAY 27 1997

Federal Communications Commission  
Office of Secretary

In the Matter of )  
 )  
Administration of the ) CC Docket No. 92-237  
North American Numbering Plan )  
Carrier Identification Codes (CICs) )

COMMENTS OF U S WEST, INC.

I. INTRODUCTION

U S WEST, Inc. ("U S WEST") hereby opposes the Emergency Motion for Stay of VarTec Telecom, Inc. ("VarTec Motion" or "Motion"), filed May 19, 1997. U S WEST opposes the VarTec Motion and requests the Federal Communications Commission ("Commission") deny it. VarTec is an interexchange carrier ("IXC") offering what is commonly known as "dial around" service, utilizing a 10XXX dialing pattern, made possible through 5-digit Carrier Access Codes ("CAC"), of which the last three digits are Carrier Identification Codes ("CIC").<sup>1</sup> Essentially, VarTec requests the Commission to stay portions of its Second Report and Order.<sup>2</sup>

VarTec's Motion is simply an attempt to secure an untimely reconsideration of the Commission's decision not to grandfather 3-digit CICs.<sup>3</sup> VarTec's current

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<sup>1</sup> VarTec Motion at 1-2.

<sup>2</sup> In the Matter of Administration of the North American Numbering Plan Carrier Identification Codes (CICs); Petition for Rulemaking of VarTec Telecom, Inc., CC Docket No. 92-237, Second Report and Order, FCC 97-125, rel. Apr. 11, 1997, 62 Fed. Reg. 19056, Apr. 18, 1997.

<sup>3</sup> VarTec raised similar issues in its Petition for Rulemaking, filed May 11, 1995. The Commission fully considered VarTec's arguments in its Second Report and Order at ¶¶ 48-49.

Motion raises no new matters and it fails to meet the procedural requirements for a Stay. Therefore, it should be denied.

Theoretically, since U S WEST does have some 3-digit CICs,<sup>4</sup> we would “benefit” from VarTec’s grandfathering request. However, we do not support VarTec’s Motion as a matter of industry equality, dialing parity or public policy. U S WEST wants the Commission to proceed expeditiously to a full implementation of 4-digit CICs. Indeed, the market is currently approaching exhaust with respect to the available 2,000 CICs. Rather than grant the VarTec Motion, and particularly in light of impending competition and the burgeoning wireless service offerings, the Commission should open up the additional 7,000 CICs potentially available for assignment.

## **II. RESPONSES TO SPECIFIC VARTEC ASSERTIONS DEMONSTRATING THAT VARTEC RAISES NO NEW ISSUES AND A STAY SHOULD BE DENIED**

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Below, U S WEST responds to certain of the specifics in the VarTec Motion, demonstrating that a Stay of the current transition plan to 4-digit dialing (or a grandfathering of existing 3-digit CICs) is not warranted.

- VarTec asserts that it has spent seven years building a customer base that uses a 10XXX dial-around procedure; and that each year, it mails tens-of-millions of marketing pieces promoting its 5-digit CACs.<sup>5</sup> None of the marketing materials attached to VarTec’s Motion demonstrate that it has

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<sup>4</sup> U S WEST has a 3-digit CIC for both our new entrant competitive local exchange carrier (“LEC”) MediaOne, as well as for U S WEST Long Distance.

<sup>5</sup> VarTec Motion at 2-3.

made any attempt to educate its customers to the new dialing regime, despite the opportunity to do so during the Commission-permitted transition period which allows for permissive dialing (i.e., use of a 3-digit or 4-digit CIC).<sup>6</sup>

**Response:** In the Second Report and Order, the Commission observed that since 1989, the industry should have been aware it would need to replace 3-digit CICs with 4-digit ones (and 4-digit CACs with 7-digit CACs).<sup>7</sup> The transition will now have lasted three years. Since the Commission's April 4, 1994 Notice of Proposed Rulemaking, the industry was on notice that changes would be likely.<sup>8</sup> VarTec should have taken action before now. Also, in its Second Report and Order, the Commission noted that VarTec wanted 12 years for consumer education.<sup>9</sup> The Commission declined to give that much time. VarTec, like other providers of 10XXX dialing services has had three years to begin advertising the new access arrangement. Apparently, however, it did not take the Commission's numbering rulings in earnest. Thus, it failed to begin consumer education in a timely fashion. A Stay should not be granted to accommodate any carrier's intentional delay in implementing the Commission's Second Report and Order requirements.

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<sup>6</sup> See Second Report and Order at n.2.

<sup>7</sup> Id. ¶ 37.

<sup>8</sup> In the Matter of Administration of the North American Numbering Plan, Notice of Proposed Rulemaking, 9 FCC Rcd. 2068 (1994).

<sup>9</sup> Second Report and Order ¶ 17.

- VarTec argues that its grandfathering proposal would lead to an increase in the number of available CICs in the long run,<sup>10</sup> which is the goal of the Commission. It asserts that similar software and switch programming that allows switches to read both 3-digit and 4-digit CICs, such as 10636 and 1016XXX, will allow for implementation of VarTec's grandfathering plan. The 3-digit CICs starting with "1" would be taken out of use so as not to confuse the switch. However, VarTec argues that this should not be a problem, since only 70 such CICs exist. It compares this type of reassignment with that required in reassigning 969 CICs, as would be required by the Commission's plan. In further support of its position that no harm would ensue to the industry from the adoption of such an approach, VarTec asserts that carriers that have 3-digit CICs that start with "1" usually also have another CIC that starts with a different digit.

**Response:** With the transition guidelines for 3-to-4-digit CIC transitioning, found specifically in the CIC Guidelines, Section 1.2, all of the 3-digit CICs became 4-digit CICs by putting a "0" as the 1st digit.<sup>11</sup> So, VarTec's CIC is "0636." None of the existing carriers need to have their CICs reassigned. The 70 carriers with CICs starting with a "1" do not have to be reassigned. Nor do the other 969 existing 3-digit CICs.

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<sup>10</sup> VarTec Motion at 4-5.

<sup>11</sup> See Carrier Identification Code Assignment Guidelines, INC 95-0127-006 ("CIC Guidelines"), referenced by the Commission in its Second Report and Order at n.1.

- VarTec complains that the Commission established its CIC transition plan without requiring reclamation of unused 3-digit CICs and either grandfathering the use of 5-digit CACs or requiring LECs to provide an intercept message informing consumers of the new CAC when they dial the old CAC.<sup>12</sup>

**Response:** The CIC Guidelines, specifically Section 6.0, deals with Reclamation Procedures, as does Appendix A. The North American Numbering Plan Administrator (“NANPA”), as well as the industry, monitors CIC usage with semi-annual reports to determine whether there are CICs that can be recovered.

- VarTec argues that the Commission’s determination in its Second Report and Order that the dialing disparity between 3-digit and 4-digit CICs during the transition period was not problematic, was internally inconsistent.<sup>13</sup>

**Response:** The Commission clearly considered transitional impacts in its various Reports and Orders in this proceeding. It acted to lessen the disadvantage the plan imposes on competing providers,<sup>14</sup> and held that interim disparity during the “transition [was] reasonable.”<sup>15</sup> The Commission was correct in its determination that it should end the disparate treatment allowed by the transition as soon as “practicable to lessen any negative effects of the disparity that exists during the

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<sup>12</sup> VarTec Motion at 5.

<sup>13</sup> Id. at 6.

<sup>14</sup> See Second Report and Order ¶ 33.

transition.”<sup>16</sup> The Commission correctly recognized that there is a disparity for competing providers. New entrants who receive assignments that require use of a 7-digit CAC may be disadvantaged as compared to those who currently have a 3-digit CIC that allows use of a 5-digit CAC.

- VarTec asserts that the Commission has acted in violation of its property rights under the Fifth Amendment.<sup>17</sup> According to VarTec, several of its property interests are affected by the Commission’s actions, including VarTec’s goodwill, service marks, and its “entitlement to engage in its chosen trade and business using the CACs in which it has invested tremendous resources.”<sup>18</sup>

**Response:** U S WEST strongly supports the concept that governments must respect the constitution, particularly the Fifth Amendment. However, in the instant case, we see no particular Fifth Amendment violation. The Commission has long recognized that telephone numbers are a public resource, and that assignees do not “own” codes or numbers.<sup>19</sup> Industry numbering policies have also “consistently

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<sup>15</sup> Id. ¶ 32.

<sup>16</sup> Id.

<sup>17</sup> VarTec Motion at 10-13.

<sup>18</sup> Id. at 10.

<sup>19</sup> See, e.g., In the Matter of The Use of N11 Codes and Other Abbreviated Dialing Arrangements, CC Docket No. 92-105, First Report and Order and Further Notice of Proposed Rulemaking, 6 Comm. Reg. 695, 717 ¶ 71 (1997) (stating that carriers do not “own” codes or numbers, but rather administer their distribution for the efficient operation of the public switched telephone network); n.229, citing to the Personal Communications Services N00 NXX Code Assignment Guidelines at ¶ 210

and unambiguously” provided that NANP resources are a public resource and assignments are subject to change or termination on short notice (i.e., NPA changes, N11 assignments like 311 and 711 that affected some information service providers’ commercial uses).<sup>20</sup>

Furthermore, under the Telecommunications Act of 1996, the Commission has exclusive jurisdiction over those portions of the NANP that pertain to the United States.<sup>21</sup> U S WEST would not advocate that the Commission just take away access codes that carriers use and customers are accustomed to using. However, the Commission has clearly provided for a reasonable transition to the new format and the industry and holders of the codes have had sufficient notice that there needed to be a change to the expanded format. Furthermore, the Commission did not make

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(April 8, 1995 Revision) “We note that Bellcore, as current administrator of the NANP, also has characterized numbers as a public resource and has specifically rejected that the assignment of a number implies ownership by either the assignor or assignee.” And see In the Matter of The Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services, Memorandum Opinion and Order, 59 Rad. Reg. 1275, 1284 at Appendix A ¶ 4. The Commission, also on several occasions, has further characterized telephone numbers as a national public resource. See, e.g., In the Matter of The Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services, Declaratory Ruling, 2 FCC Rcd. 2910, 2912 ¶ 19 (1987); on recon., 4 FCC Rcd. 2369 ¶ 3 (1989).

<sup>20</sup> In the CIC Guidelines, specifically Section 5.2 dealing with transfer of CICs, it states, “The assignment of a CIC does not imply ownership. Although not a formal asset of an entity, a CIC may be transferred to another entity through merger or acquisition as long as the CIC is in use. The NANPA must be informed of such transfers.” Additionally, the application form signed by the CIC Entity clearly states that “the CIC will be used in accordance with the CIC Assignment Guidelines.” These are not new revisions to the Guidelines. These have been in the Guidelines since the initial version.

<sup>21</sup> 47 U.S.C. § 251(e)(1).

these determinations in a vacuum. It gathered comments and data from the industry, vendors, etc., in making its determination.

The need for CICs is increasing as competition increases. Carriers have needs for multiple assignments of CICs to provide new and innovative services that for technical routing or billing reasons prevent the use of a single CIC. New entrants should be allowed parity for the access to their services.

- VarTec complains that the Commission did not mandate a recorded message to be used in conjunction with superseded CACs and that this failure will result in customers not being able to “find VarTec” after the transition is completed “or worse . . . believ[ing] that the company is either undependable or out of business.”<sup>22</sup> VarTec objects to the fact that the Commission’s plan does not provide for customer education and does not require LECs to inform consumers nor does it propose that anyone else educate the public. Thus, VarTec asserts, its only possible means of attempting to contact its dial-around customers is by attempting to match their phone numbers with addresses. This is time-consuming, expensive and not always reliable.

**Response:** All carriers, LECs and IXC’s, should be responsible for educating their customers regarding dialing changes. LECs are not in the best position to educate an IXC’s customers regarding dialing changes for CACs. IXC’s can utilize a variety of marketing methods in support of end-user customer education. They are in the

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<sup>22</sup> VarTec Motion at 7.



position to determine the most effective method of informing their own customers of the CAC change. A general announcement<sup>23</sup> may create more confusion regarding CACs, since many customers may access their IXC when traveling by use of an 800 number.

### III. CONCLUSION

For all the above reasons, VarTec's Motion for Stay should be denied. The Commission should stay on track with its transition plan. Doing so will ensure dialing parity across the industry. For this reason, the Commission's current proposal is not only sound as a matter of law but from a public policy perspective.

Respectfully submitted,

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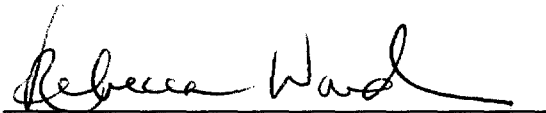
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<sup>23</sup> U S WEST cannot technically provide individualized recordings for each IXC's CAC.

## **CERTIFICATE OF SERVICE**

I, Rebecca Ward, do hereby certify that on this 27th day of May, 1997, I have caused a copy of the foregoing **COMMENTS OF U S WEST, INC.** to be served via first-class U.S. Mail, postage-prepaid, upon the persons listed on the attached service list.

A handwritten signature in cursive script, reading "Rebecca Ward", is written over a horizontal line.

Rebecca Ward

**\*Via Hand-Delivery**

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